SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY
WRIT APPEAL NO. 970 OF 2006

BETWEEN
Mudunuru Lakshmi

.....Appellant

And
The District Collector,
Visakhapatnam & others

.....Respondents

Counsel for the appellant : Shri G. Rama Gopal

Counsel for respondent Nos.1 and 2 : Government Pleader for Assignments

Counsel for respondent Nos.3 and 4 : Shri J. Prabhakar

Dated: 27.09.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 03.08.2006 passed by the learned Single Judge in Writ Petition No.16356 of 2003 whereby he declined the appellant's prayer for restraining the respondents from dispossessing her from land measuring Ac.2.00 situated in Survey No. 1/8 of Madhuravada Village, Visakha (Rural) Mandal, Visakhapatnam District.

In the affidavit filed by her in support of the writ petition, the petitioner (appellant herein) claimed that the land in question was assigned to her by the then Tahasildar, Visakhapatnam, and after taking possession, she developed the land by taking loan of Rs.14,500/- from District Co-operative Central Bank, Visakhapatnam. She further averred that her name was mutated in the revenue records and she has been paying various taxes. She alleged that the officers of the Andhra Pradesh Housing Board (for short 'the Board') came to the site on 30.07.2003 and threatened to dispossess her. Along with the affidavit filed by her, the petitioner produced photostat of the typed copy of D-Form patta, photostat copies of two settlement Adangal Registers and temporary receipts of land tax issued by Village Munsif. She also produced copies of the record for title of the land.

In the counter-affidavit filed by Marupuri Visweswara Naidu, Mandal Revenue Officer, Visakhapatnam (Rural) Mandal, it was averred that the land comprised in Survey No.1/8 measuring Ac.4-22 cts. of Madhurawada Village was assigned to one Vandrasi Kithayya by the then Tahasildar,

Visakhapatnam and not to the petitioner. He further averred that the assignment made in favour of Vandrasi Kithayya was cancelled by the Mandal Revenue Officer vide proceedings Rc.No. 99/2001 dated 15.11.2001, and thereafter possession of the land was handed over to the Board. He controverted the appellant's assertion that Ac.2.00 of land comprised in Survey No.1/8 was assigned to her. According to him, the documents produced by the writ petitioner (appellant herein) were fabricated and she wanted to grab the land in question.

In a separate counter-affidavit filed by B. Rajagopala Rao, Executive Engineer (Housing) of the Board, it was averred that land comprised in Survey Nos. 1/3, 1/4, 1/6 and 1/8 measuring Ac.18.95 cts. of Madhurawada Village was allotted to the Board for the purpose of construction of Model Residential Township and possession thereof was handed over to the Board. The deponent further averred that the copy of the D-Form patta produced by the petitioner was fabricated.

The appellant filed reply affidavit reiterating her assertion that the land had been assigned to her. She also relied on the averments contained in the counter-affidavit filed by the Mandal Revenue Officer in Writ Petition No.17667 of 2001 to show that the official respondents had admitted her title over the property.

The learned Single Judge took cognizance of the rival pleadings and the fact that the petitioner had not produced any documentary evidence to controvert the averments contained in the counter-affidavits filed by Mandal Revenue Officer as also the one filed on behalf of Board that the D-Form patta produced by her was fabricated and held that the petitioner has failed to make out a case for exercise of power by the High Court under Article 226 of the Constitution of India.

Learned counsel for the appellant made strenuous efforts to persuade us to upset the finding recorded by the learned Single Judge on the tenability of his client's claim, but we have not felt impressed. Rather, we are convinced that in the teeth of the categorical averments contained in the counter-affidavits filed by the official respondents that the copy of D-Form patta produced by the appellant was fictitious document, the learned Single Judge had no option but to dismiss the writ petition. During the course of hearing, learned counsel for the appellant fairly conceded that the original D-Form patta allegedly possessed by his client was not produced on the record of the writ petition but argued that his client should not be made to suffer only on account of this omission. He submitted that the other contemporaneous evidence produced by the appellant was sufficient to sustain her claim regarding assignment of the land and the learned Single Judge gravely erred by non-suiting her only on the ground of non-production of the D-Form patta. He lastly argued that even if the Court is not inclined to entertain the appellant's prayer for restraining the respondents from dispossessing her, she may be allowed to avail the alternative remedy by filing civil suit.

Learned Government Pleader for Assignments supported the order under challenge and argued that the appellant is not entitled to any relief under Article 226 of the Constitution because her claim is based on a fabricated document. She submitted that possession of the land was handed over to the officers of the Board in 2003 itself and, therefore, at this belated stage, the appellant should not be given liberty to litigate in the civil court. Shri J. Prabhakar, learned counsel appearing for Andhra Pradesh Housing Board supported the learned Government Pleader on the issue of tenability of the appellant's claim regarding assignment of land, but submitted that he does not have any serious objection if the appellant is granted leave to avail remedy by way of civil suit.

We have considered the respective submissions and perused the record. In our opinion, the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer for restraining the official respondents from dispossessing her because –

i) the appellant did not produce any evidence to controvert the allegations contained in the

counter-affidavits filed on behalf of the respondents that the land was not assigned to her and that copy of the D-Form patta dated 28.06.1979 produced by her was fabricated document. Not only this, for the reasons best known to her, the appellant withheld the original of the basic document i.e. D-Form patta which constituted the foundation of her claim regarding assignment of land by the then Tahasildar,

ii) the appellant did not produce any evidence to controvert the assertion contained in the affidavit of the Mandal Revenue Officer that land comprised in Survey Number 1/8 had been allotted to one Vandrasi Kithayya and his assignment was cancelled by the Mandal Revenue Officer vide his order dated 15.11.2001, and

iii) the possession of the land had already been handed over to the authorities of the Housing Board for the purpose of constructing Model Residential Township.

In the result, the appeal is dismissed. However, liberty is given to the appellant to avail alternative remedy by way of civil suit to substantiate her claim over the land in question. Needless to say that if the appellant files civil suit, the respondents shall be entitled to contest the same by raising all legally permissible objections including the one of limitation.

As a sequel to dismissal of the writ appeal, W.A.M.P.Nos. 2071 and 2072 of 2006 filed by the appellant are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.09.2006
ksld